

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ROBERT RODRIGUEZ,

Plaintiff - Appellant,

v.

HOME DEPOT USA, INC.,

Defendant - Appellee.

No. 04-56046

D.C. No. CV-02-00617-ABC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Argued and Submitted April 3, 2006
Pasadena, California

Before: SCHROEDER, Chief Judge, BRIGHT** and PREGERSON, Circuit
Judges.

Plaintiff-Appellant Robert Rodriguez appeals the district court's award of
damages and attorney's fees under the California Unruh Civil Rights Act.

Specifically, Rodriguez contends that the district court erred when it failed to

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to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Myron H. Bright, Senior United States Circuit Judge
for the Eighth Circuit, sitting by designation.

award statutory damages for each incident of discrimination, and that the district court improperly reduced his attorney's fees award. We have jurisdiction under 28 U.S.C. § 1291. We hold that Rodriguez waived his right of review of the statutory damages claim because at trial he failed to object to the district court's jury instruction on damages. We likewise decline to disturb the attorney's fees award. The facts are known to the parties and we do not recite them here.

It is clear from the record that Rodriguez and the district court disagreed on the proper method for computing damages under the Unruh Civil Rights Act, section 52(a) of the California Civil Code. Yet Rodriguez did not propose a jury instruction that would have awarded minimum statutory damages per incident. Nor did he object to the district court's jury instructions on damages. Rodriguez waived his right of review by failing to object. *Affordable Hous. Dev. Corps v. City of Fresno*, 433 F.3d 1182, 1196 (9th Cir. 2006) (holding that failure to object to jury instruction waives the right of review); *see also Shanghvi v. City of Claremont*, 328 F.3d 532, 541 (9th Cir. 2003) (same); *Shaw v. City of Sacramento*, 250 F.3d 1289, 1293 (9th Cir. 2001) (same).

We review attorney's fees awards for an abuse of discretion. *See Childress v. Darby Lumber, Inc.*, 357 F.3d 1000, 1011 (9th Cir. 2004). We will not reverse unless we have a definite and firm conviction that the court below committed a

clear error of judgment. *See SEC v. Coldicutt*, 258 F.3d 939, 941 (9th Cir. 2001).

The district court's eleven-page attorney's fees order provides us with a carefully reasoned, conscientious analysis. We do not have a definite and firm conviction that the district court made an error in judgment when it reduced the attorney's fees award.

Accordingly, the judgment of the district court is **AFFIRMED**.